

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JODY LOMBARDO & BRYAN GILBERT,

PLAINTIFFS,

v.

**CITY OF ST. LOUIS, RONALD
BERGMANN, JOE STUCKEY, PAUL
WACTOR, MICHAEL COGNASSO, KYLE
MACK, ERICH VONNIDA, BRYAN
LEMONS, ZACHARY OPEL, JASON KING,
& ROLAND DeGREGORIO,**

DEFENDANTS.

Civil Action No. 4:16-CV-01637 NCC

DEFENDANT CITY OF ST. LOUIS'S MOTION TO DISMISS

Defendant City of St. Louis ("City") respectfully moves the Court to dismiss the Complaint of Plaintiffs Jody Lombardo and Bryan Gilbert ("Plaintiffs") under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted. In support, City states:

1. Plaintiffs make claims directly against City in five of the twenty counts in the Complaint: Count I alleges "improper restraint procedures" in violation of the Fourth and Fourteenth Amendments under 42 USC § 1983 ("§ 1983"); Count II alleges excessive force in violation of the Fourth and Fourteenth Amendments under § 1983; Count III alleges "deliberately indifferent policies, practices, customs, training, and supervision" in violation of the Fourth and Fourteenth Amendments under § 1983; Count IV alleges deliberate indifference to a medical need in violation of the Fourth and Fourteenth Amendments under § 1983; and Count XX alleges negligence. *See* Complaint pp. 8-18; 50-51.
2. In the remaining counts of the Complaint, Plaintiffs allege similar constitutional violations against ten police officers employed by City, and Plaintiffs sue those officers in both their individual capacities and their official capacities. *See generally* Complaint.
3. The Court should dismiss Plaintiffs' claims against City in Counts I, II, III, and IV because Plaintiff fails to allege sufficiently facts to establish an official policy or unofficial

custom for municipal liability under § 1983. *Doe v. Sch. Dist. of City of Norfolk*, 340 F.3d 605, 614 (8th Cir. 2003).

4. The Court should dismiss Plaintiffs' claim against City in Count XX because it is barred by sovereign immunity under Missouri law. § 537.600 RSMo.

5. The Court should dismiss the official capacity claims against the ten individually-named police officers because "a suit against a government officer in his official capacity is functionally equivalent to a suit against the employing governmental entity" and thereby redundant of the claim against City. *Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1257 (8th Cir. 2010) (holding dismissal of such claims proper because they are redundant).

6. City concurrently submit a Memorandum of Law of this motion which sets out the relevant arguments and citations to authority which support the relief City requests.

WHEREFORE, City prays the Court grant its Motion to Dismiss for failure to state a claim, with prejudice, and for any other relief the Court deems fair and reasonable.

Respectfully submitted,
MICHAEL A. GARVIN,
CITY COUNSELOR

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CERTIFICATE OF SERVICE

I hereby certify this Entry was electronically filed with the Court for service by means of Notice of Electronic Filing upon all attorneys of record on December 21, 2016.

/s/ J. Brent Dulle